

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>2</p> <p>3 In the Matter of:            )</p> <p>4                                ) File No. C-08400-A</p> <p>5 CATALYST HEDGED FUTURES    )</p> <p>6 STRATEGY FUND                )</p> <p>7</p> <p>8 WITNESS: Edward Walczak</p> <p>9 PAGES: 1 through 325</p> <p>10 PLACE: Securities and Exchange Commission</p> <p>11 175 West Jackson Boulevard,</p> <p>12 Suite 1400</p> <p>13 Chicago, Illinois</p> <p>14 DATE: Tuesday, April 3, 2018</p> <p>15</p> <p>16 The above-entitled matter came on for hearing,</p> <p>17 pursuant to notice, at 9:10 a.m.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Diversified Reporting Services, Inc.</p> <p>25 (202) 467-9200</p>	<p style="text-align: right;">Page 3</p> <p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS: EXAMINATION</p> <p>4 Edward S. Walczak 4</p> <p>5</p> <p>6 EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>7 85 Presentation 186</p> <p>8 86 Fact Sheet 184</p> <p>9 87 Presentation 196</p> <p>10 107 Subpoena 12</p> <p>11 108 Background Questionnaire 88</p> <p>12 109 Fact Sheet 112</p> <p>13 110 Proposed Approval 225</p> <p>14 111 Presentation 246</p> <p>15 112 Presentation 247</p> <p>16 113 Agreement 269</p> <p>17 120 Reconciliation 84</p> <p>18 124 Rios Agreement 293</p> <p>19 133 Prospectus 115</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 JASON SCHMIDT</p> <p>5 DAVID BENSON</p> <p>6 TERRY MORAN</p> <p>7 JEFF SHANK</p> <p>8 Securities and Exchange Commission</p> <p>9 175 W. Jackson, Suite 1450</p> <p>10 Chicago, IL 60604</p> <p>11</p> <p>12 On behalf of the Commodity Futures Trading</p> <p>13 Commission:</p> <p>14 SAM WASSERMAN</p> <p>15 MICHAEL CAZAKOFF (via telephone)</p> <p>16 Commodity Futures Trading Commission</p> <p>17 140 Broadway</p> <p>18 New York, NY 10005</p> <p>19</p> <p>20 On behalf of the Witness:</p> <p>21 ZACHARY J. ZILIAK</p> <p>22 STEVEN BYLINA</p> <p>23 Ziliak Law, LLC</p> <p>24 141 West Jackson Boulevard, Suite 4048</p> <p>25 Chicago, IL 60604</p>	<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 MR. SCHMIDT: So we're on the record</p> <p>3 April 3rd, 2018, at 9:10 a.m.</p> <p>4 Can you please raise your right hand?</p> <p>5 Whereupon,</p> <p>6 EDWARD S. WALCZAK</p> <p>7 was called as a witness and, having been first</p> <p>8 duly sworn, was examined and testified as</p> <p>9 follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. SCHMIDT:</p> <p>12 Q Okay. Can you please state and spell</p> <p>13 your full name for the record?</p> <p>14 A Edward S. Walczak, W-a-l-c-z-a-k.</p> <p>15 Q Okay. My name is Jake Schmidt. This</p> <p>16 is David Benson.</p> <p>17 MR. BENSON: Good morning.</p> <p>18 MR. SCHMIDT: Down at the end, that's</p> <p>19 Terry Moran. We are members of the staff of the</p> <p>20 enforcement division based in Chicago of the SEC,</p> <p>21 and for purposes of this proceeding, we are</p> <p>22 officers of the Commission.</p> <p>23 Another colleague, Jeff Shank, may be</p> <p>24 joining us as well later on. So if you see</p> <p>25 somebody come in, that's who it is.</p>

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1 at the mercantile exchange, CME.  
 2 Q The physical room?  
 3 A Yeah, big room.  
 4 Q Okay. Versus electronically traded on  
 5 a computer, right?  
 6 A Correct.  
 7 Q And is it true that the larger  
 8 contracts are not traded electronically, or are  
 9 they?  
 10 A I think they are. I've not done it,  
 11 and I'm not -- I'm really not familiar. So that,  
 12 again -- that would be an example of speculation  
 13 on my part. I've never done it.  
 14 I do think there may be some electronic  
 15 trading of the larger contracts.  
 16 Q Okay. And what about the minis?  
 17 A Minis are traded on Globex -- the  
 18 Globex exchange nearly 24-7.  
 19 Q But not in the pit?  
 20 A Not in the pit, no.  
 21 Q Okay. Have you seen a transcript of  
 22 your prior testimony?  
 23 A I have not.  
 24 Q Okay. There's a couple things that I  
 25 want to review from what you testified about

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1 before, sort of to give us a general time line.  
 2 I think it might help us to frame what we are  
 3 talking about today.  
 4 So Harbor Assets, L.L.C., is the  
 5 predecessor private fund to the Catalyst Hedged  
 6 Futures Strategy Fund, correct?  
 7 A Correct.  
 8 Q Okay. And Harbor Assets, L.L.C.,  
 9 started trading in December 2005; is that right?  
 10 A That's correct.  
 11 Q And it was converted to a '40 Act  
 12 mutual fund named Catalyst Hedged Futures  
 13 Strategy Fund in or about August 2013; is that  
 14 right?  
 15 A That's correct.  
 16 Q And since that time has continued as  
 17 the Catalyst Hedged Futures Strategy Fund up to  
 18 the present?  
 19 A Correct.  
 20 Q Okay. So for purposes of today, can we  
 21 call those two phases the Harbor fund and the  
 22 futures fund?  
 23 A Yes.  
 24 Q Okay. And that means just before and  
 25 after the conversion. You understand that?

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1 A Correct.  
 2 Q Okay. But it's essentially the same  
 3 fund as well -- you -- same strategy?  
 4 A Correct.  
 5 Q Okay.  
 6 A Same strategy, same manager.  
 7 Q Okay. And can we agree that Catalyst  
 8 means Catalyst Capital Advisors?  
 9 A Sure.  
 10 Q Okay. If at any point you think  
 11 Catalyst -- that's confusing and should refer to  
 12 something else, just let me no.  
 13 A I will.  
 14 Q Okay. During its entire existence,  
 15 have you been the PM -- sorry -- portfolio  
 16 manager of the Harbor fund and the futures fund?  
 17 A I have.  
 18 Q Okay. And approximately in December  
 19 2014 to the present, a woman named Kimberly Rios  
 20 has worked with you?  
 21 A That's correct.  
 22 Q And Ms. Rios is currently a portfolio  
 23 manager for the futures fund, correct?  
 24 A She is not currently, no.  
 25 Q Okay. Was Ms. Rios ever a portfolio

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1 manager for the futures fund?  
 2 A Yes.  
 3 Q Can you give me the date range of when  
 4 that occurred?  
 5 A She was hired at some point. I can't  
 6 give you exact, but I believe December of 2014 is  
 7 a good approximation.  
 8 And we've recently realigned  
 9 responsibilities so that she does not work on the  
 10 hedged futures fund. Recently meaning as of  
 11 yesterday.  
 12 Q Oh, okay. Very recently?  
 13 A Very recently.  
 14 Q Okay. So -- but through all of 2017,  
 15 she was?  
 16 A Yes.  
 17 Q Okay. Now --  
 18 MR. BENSON: Why did you -- if I can,  
 19 Jake.  
 20 MR. SCHMIDT: Yep.  
 21 BY MR. BENSON:  
 22 Q Who made the decision to realign Ms.  
 23 Rios's responsibilities with regard to the  
 24 futures fund?  
 25 A I did.

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1 what is the full name of the commodity fund?  
 2 A Catalyst Hedged Commodity Strategy  
 3 Fund.  
 4 Q Okay. And we can just call it the  
 5 commodity fund for today?  
 6 A Sure.  
 7 Q Okay. So before and after the  
 8 realignment, part -- was -- part of her  
 9 conversation -- compensation was based on her  
 10 work for the commodity fund?  
 11 A Yes.  
 12 Q Did that get changed in any way upon  
 13 the realignment?  
 14 A No.  
 15 Q Okay. I think you said that Ms. Rios  
 16 was hired in December of 2014?  
 17 A That's my best recollection, yeah.  
 18 Q Was she hired as a portfolio manager  
 19 for the futures funds, or was she hired in a  
 20 position separate from that?  
 21 A The intent was to place her in a  
 22 portfolio manager position, which we did.  
 23 I don't recall for sure if we hired her  
 24 immediately as a portfolio manager or not.  
 25 Q Okay. Do you have any understanding as

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1 to how quickly she became a port -- portfolio  
 2 manager, or is there a point in time when  
 3 you're -- when you can say by mid 2015 she was  
 4 definitely a portfolio manager for the futures  
 5 funds?  
 6 A I honestly just don't recall.  
 7 Q You don't recall. Okay.  
 8 So let's talk about the time when both  
 9 you and Ms. Rios are portfolio managers for the  
 10 futures fund, which continued up until, we'll say  
 11 the end of March --  
 12 A Correct.  
 13 Q -- 2018. Okay?  
 14 That entire period you're the senior  
 15 PM?  
 16 A That's correct.  
 17 Q And Ms. Rios is the assistant PM?  
 18 A Correct.  
 19 Q Okay. Can you tell us what that means  
 20 in terms of day-to-day responsibilities and how  
 21 the fund operates?  
 22 A Sure. And at a -- at the highest  
 23 level, that means that I was responsible for the  
 24 ultimate determination of trades, position  
 25 adjustments, the core of the portfolio management

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1 responsibilities, as I would describe them.  
 2 Ms. Rios was responsible for analyzing  
 3 markets, positions, suggesting trades, responding  
 4 to my requests for information. She at some  
 5 point became responsible for the fixed income  
 6 portion of the funds' activities so she would  
 7 monitor cash levels in the funds -- the fund and  
 8 suggest to me treasury purchases, other fixed  
 9 income instrument type of purchases.  
 10 She also -- outside of the fixed income  
 11 part of the equation, yeah, really analytical  
 12 support, trade recommendations with an ultimate  
 13 goal that she would some day participate in the  
 14 trading -- directly in the trading of the fund,  
 15 but that did not -- that did not happen.  
 16 Q Okay. So at all times you have the  
 17 final say on what the fund is doing?  
 18 A Correct.  
 19 Q And that's true even with respect to  
 20 the fixed income portion? She makes suggestions,  
 21 she does the analysis, but it's really up to you  
 22 as to how you're going to allocate the fund's  
 23 assets?  
 24 A That's correct.  
 25 Q Okay. Was there any portion of the

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1 management of the fund in which Ms. Rios had the  
 2 final say?  
 3 A I would say no. I mean, I'll qualify  
 4 that by the fact that I did give her some  
 5 discretion on the fixed income side so it wasn't  
 6 the case that every single time she brought a  
 7 treasury bond that I approved it.  
 8 Q Okay. I got it.  
 9 But to do that, she needed you to say  
 10 it's okay as opposed to you never needed her to  
 11 say anything is okay for you to make a decision?  
 12 A That's correct.  
 13 Q Okay.  
 14 BY MR. BENSON:  
 15 Q Before we go on, did you need to get  
 16 approval from Catalyst to make any portfolio  
 17 management decisions?  
 18 A Generally, no. I'm just trying to be  
 19 comprehensive in thinking about whether there are  
 20 any cases in which I did, but generally, no. At  
 21 least -- well, it depends on time frame so --  
 22 Q Right. And we're focusing from 2013  
 23 all the way through today.  
 24 A Right. So -- so in, I want to say  
 25 October or November of 2017, Catalyst -- as a

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1 part of our new risk control and risk framework  
2 that was instituted, Catalyst instituted a trade  
3 approval policy. So there were certain  
4 conditions which had to be met for me to exercise  
5 full discretion in placing a trade and certain  
6 conditions by which I had to request approval  
7 from the Catalyst risk process.

8 Q So let's go from conversion to a mutual  
9 fund in mid 2013 up until, say, the summer of  
10 2017, before this policy is instituted.

11 Are there any occasions where you  
12 needed Catalyst approval to execute the strategy  
13 of the portfolio?

14 A Not a formal approval. The situation  
15 I'll describe is that, when -- when certain of  
16 our risk triggers were activated, particularly in  
17 December of 2016, then a Catalyst risk committee  
18 was convened, and reactions to the determination  
19 of the best measures to take to alleviate the --  
20 the risk condition were made jointly.

21 Q Okay. So -- and how long did that  
22 continue, if that started in December of 2016?

23 A That occurred at every time that we had  
24 a situation where we had a risk trigger. In  
25 other words, when -- if we had a risk trigger,

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1 then the committee would get on the phone. We  
2 would discuss alternatives and come to a  
3 consensus on -- on how to proceed.

4 Q You mean after December 2016?

5 A Yes.

6 Q Okay. So going -- so going from the  
7 creation of the futures fund in mid 2013 up till,  
8 say, the end of November 2016, before the risk  
9 committee is formed, are there any instances  
10 where you need Catalyst approval to inter-trade,  
11 to execute trades, to do your strategy?

12 A No, outside of conforming the  
13 prospectus. So there were -- there were no  
14 circumstances there where I needed a specific  
15 trade approval.

16 Q Okay. In your previous testimony, you  
17 described both what you characterize as a call  
18 strategy and a put strategy. And I just want to  
19 make sure I understand what you're talking about.  
20 Okay?

21 A Sure.

22 Q So the call strategy, you buy long-call  
23 options above the market and sell -- or you buy a  
24 long-call option above the market and sell two or  
25 three call options usually at or near the same

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1 premium; is that correct?

2 A Correct.

3 Q Okay. And you call that either a one  
4 by two, which is buy one, sell two, or one by  
5 three, buy one, sell three?

6 A Correct.

7 Q Okay. And sometimes you also refer to  
8 this as the above-the-market strategy; is that  
9 correct?

10 A Well, I mean, it's our -- our low  
11 volatility strategy. It's driven by volatility  
12 analytics, but it's generally a strategy we are  
13 employing with call options, which are above the  
14 market.

15 Q Okay. And in -- can I just call it the  
16 call strategy?

17 A Sure. Sure.

18 Q Okay. In the call strategy, all the  
19 legs of your position are in the same expiration  
20 month; is that correct?

21 A At entry, yes.

22 Q Okay. And then you also have a put  
23 strategy, and obviously instead of buying calls,  
24 you're buying puts, right?

25 A Buying and selling puts.

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1 Q Buying and selling puts.

2 Instead of all the expirations being in  
3 the same month, you're doing calendar spreads,  
4 and they are in different months; is that  
5 correct?

6 A Correct.

7 Q Is there any other way that the put  
8 strategy differs from the call strategy?

9 A It's driven by different volatility  
10 conditions in the market.

11 It's -- the put strategy, it's a one --  
12 what's the right word? One constraint on the put  
13 strategy, for example, is we don't use -- we  
14 don't have more short options than long on the  
15 put side.

16 Q Okay.

17 A So there aren't -- there aren't ratios  
18 involved in the same way as the call strategy.

19 Q I see. Okay. When you were PM of the  
20 Harbor fund before it converted, did you use the  
21 call strategy and the put strategy?

22 A Yes.

23 Q Okay. When -- has that been the  
24 strategy since the beginning?

25 A Yes.

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1 Q Okay. In 2007, the Harbor fund  
 2 experienced a drawdown; is that correct?  
 3 A Yes.  
 4 Q All right. And from that experience,  
 5 you developed certain risk parameters?  
 6 A Correct.  
 7 Q And although it didn't result in a new  
 8 trading strategy, it affected the way you sized  
 9 positions and exposed yourself to volatility; is  
 10 that fair?  
 11 A Yes.  
 12 Q Okay. And when the Harbor fund  
 13 converted over to the future fund, you continued  
 14 those risk parameters?  
 15 A Yes.  
 16 Q And at some point after conversion,  
 17 George Amhrein, A-m-h-r-e-i-n, was appointed  
 18 chief risk officer of Catalyst, correct?  
 19 A Yes.  
 20 Q And you and he collaborated on certain  
 21 additional risk factors?  
 22 A Yes.  
 23 Q Let me show you what's been marked as  
 24 Exhibit 17.  
 25 So it's my understanding that this is

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1 the state of those risk factors as of December  
 2 2014, which would be approximately a year and a  
 3 half after conversion; is that correct?  
 4 A I -- I don't recall this specific  
 5 document. I recognize the fact that the pages --  
 6 or the items on it, but we did a lot of work with  
 7 drafts.  
 8 I don't know if this is a final version  
 9 or not. I'm not sure.  
 10 MR. ZILIAK: If I may, is there a Bates  
 11 number on this document, or where did this come  
 12 from, please?  
 13 MR. SCHMIDT: There is a Bates. It's  
 14 not -- for some reason, it doesn't print, but the  
 15 Bates is SEC\_01\_0003055.  
 16 MR. ZILIAK: Thank you.  
 17 MR. BENSON: And, Zach, you'll notice  
 18 throughout today's testimony there will be  
 19 instances where we have marked documents that do  
 20 not have a Bates stamp. There -- there was a  
 21 production issue that has subsequently been  
 22 resolved, but certain of those files were not.  
 23 MR. ZILIAK: Okay. I'll just try to  
 24 remember to ask.  
 25 MR. SCHMIDT: Yeah. And we can also

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1 get them to you at breaks or afterwards too.  
 2 However you want to do it.  
 3 MR. ZILIAK: Okay.  
 4 BY MR. SCHMIDT:  
 5 Q So I'm not really concerned whether  
 6 this is final or not.  
 7 Assuming that the date is accurate,  
 8 this is about a year and a half after conversion,  
 9 correct?  
 10 A Correct. I mean, I recognize it to be  
 11 a draft just by looking at it because there are  
 12 some -- there are some errors in terminology on  
 13 here that even in my worst moment I would not  
 14 have produced.  
 15 Q Okay. All right. Thank you for that.  
 16 We'll go over those.  
 17 Previously when you looked at this  
 18 document in your previous testimony, you  
 19 indicated that risk parameters 1, 2, and 6, which  
 20 are no positions in markets outside of the S&P  
 21 500, that's Risk Parameter 1. Risk Parameter 2  
 22 is no futures positions open overnight. And Risk  
 23 Parameter 6, which is maximum drawdowns, five  
 24 percent in one week, eight percent in one month.  
 25 Those were parameters that you had added in

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1 collaboration with Mr. Amhrein; is that correct?  
 2 A Those are -- yeah. Those are  
 3 parameters that I suggested be added to the list  
 4 that weren't present in the prior fund.  
 5 Q And that's all I'm -- I am trying to  
 6 determine what you came up with in the wake of  
 7 your experience in 2007 and then what was added  
 8 after your collaboration with Mr. Amhrein.  
 9 A Okay.  
 10 Q So that means that Risk Parameters No.  
 11 3, 4, 5, and 7 are essentially the ones you came  
 12 up with before Mr. Amhrein's involvement?  
 13 A Just give me a moment to look --  
 14 Q Sure.  
 15 A -- at 3, 4, 5, and 7.  
 16 MR. WASSERMAN: While the witness is  
 17 taking a moment, Mike on the phone is having  
 18 trouble hearing. Can we move this over there --  
 19 MR. SCHMIDT: Yes, certainly.  
 20 MR. WASSERMAN: -- or wherever --  
 21 wherever the microphone is.  
 22 (A discussion was held off the record.)  
 23 THE WITNESS: Could you -- now that  
 24 I've looked at it, just repeat the question for  
 25 me, if you would.

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1 A The risk framework had been finalized.  
 2 This -- this report is generated by a -- a  
 3 portfolio aggregation software that we call Model  
 4 Alpha, which essentially aggregates our positions  
 5 across our FCMs.

6 When we first began to track risk, we  
 7 did that manually and -- and onboarded to Model  
 8 Alpha at some point. Again, I don't remember  
 9 exactly when.

10 So at some point, we had formal risk  
 11 metrics in place under which that metric was  
 12 eight percent. And at some point, I believe  
 13 roughly July of 2016, we elected to reduce it  
 14 from eight percent to six percent.

15 Q Why?

16 A We -- we had a risk trigger in July of  
 17 2016 that -- that caused us, as they always do,  
 18 to evaluate the framework and -- and the  
 19 appropriateness of the levels.

20 Q So when you say, "We had a risk  
 21 trigger," specifically to open options premium  
 22 value?

23 A No. If I recall right, we actually  
 24 triggered on -- on one or both of our margin  
 25 numbers.

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1 We may have triggered others, but  
 2 that's the one I remembered.

3 Q Okay. So there's a trigger on some  
 4 risk parameter. You think it might be margin.  
 5 It causes you to have a discussion with Mr.  
 6 Szilagyi and Mr. Amhrein. The end of that  
 7 discussion is producing this particular risk  
 8 parameter metric from eight percent to six  
 9 percent?

10 A Correct.

11 Q Okay. But why is what I want to know.  
 12 I understand that that's the end result. Why?

13 A Well, and the other -- by the way, my  
 14 recollection says we also reduced our position  
 15 constraints on the call side.

16 Q Okay.

17 A In fact, this is -- yes. This is  
 18 post-reduction because I'm seeing a 50, and I  
 19 recall it to have been 60, like the puts, and we  
 20 reduced it.

21 We evaluated the reason for the risk  
 22 trigger, and we, in somewhat of a subjective  
 23 judgmental fashion, chose to reduce position  
 24 sizing and open-option premium limits because  
 25 those are the things that will typically drive

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1 margin and -- and our main drivers of risk in the  
 2 portfolio, at least in my -- my opinion.

3 Q So is it fair to say that the risk  
 4 trigger or the risk parameter was triggered, you  
 5 guys got together and evaluated it, and decided  
 6 that maybe it got triggered too early and,  
 7 therefore, you would adjust these other risk  
 8 parameters so that it isn't triggered as early?

9 A No. The -- this adjustment actually  
 10 makes the risk parameters tighter.

11 Q It makes it tighter?

12 A Yes.

13 Q Okay.

14 A This would cause triggers to be hit  
 15 earlier.

16 Q And so is there any -- are there  
 17 e-mails, are there memos, is there anything about  
 18 this actual analysis and decision to modify the  
 19 risk parameters in the summer of 2016?

20 A I don't know. I suspect that you have  
 21 them, if there are.

22 Q Sitting here today, do you know whether  
 23 there are any? Have you seen any?

24 A I don't know, no.

25 Q Okay. Going down on the metrics, it

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1 says change in NAV per share week, five percent  
 2 in one week. Do you see that?

3 A Yes.

4 Q Is that a calendar week or the last  
 5 seven days?

6 A I don't recall what is built into this  
 7 calculation. The intent is five trading days.

8 Q Five trading days. Okay.

9 And same question for eight percent and  
 10 one month. Is it --

11 A That's clearly a calendar -- the intent  
 12 is a calendar month. Again, what -- whether  
 13 there's 22 trading days built in here or whether  
 14 there's a calendar in this report, I'm not 100  
 15 percent sure.

16 Q Okay. So the two options for that one  
 17 are either it's month to date or the last 22  
 18 approximate calendar -- or trading days?

19 A Correct.

20 Q Okay.

21 A It's our -- let me step back.

22 Month date is not the case. It's  
 23 clearly a rolling period of some kind.

24 Q Okay. So you think it's some --

25 something close to 22, 20 to 22 of the previous

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1 trading days?  
 2 A Correct.  
 3 Q And it rolls?  
 4 A Correct.  
 5 Q Okay. The next column is just the  
 6 current reading of the metric, right?  
 7 A Yes.  
 8 Q So the way you read this report, it  
 9 tells you where it should be or where the trigger  
 10 is, and then the next column tells you whether or  
 11 not you're above or below that trigger?  
 12 A Yes.  
 13 Q Okay. "Reported by" is where you get  
 14 the information that generates the numbers in the  
 15 third column?  
 16 A Yes.  
 17 Q Okay.  
 18 MR. ZILIAK: Sorry. You say the third  
 19 column. It's actually -- oh, reported in the  
 20 third. So the source.  
 21 MR. SCHMIDT: Yep.  
 22 MR. ZILIAK: I'm sorry. Go ahead.  
 23 1 BY MR. SCHMIDT:  
 24 Q Yeah. Do you understand what I said,  
 25 Mr. Walczak?

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1 A Yes. Say it again.  
 2 Q So "reported by" is where you get the  
 3 information that generates the numbers in the  
 4 third column?  
 5 A Yes. Yes.  
 6 Q Okay.  
 7 MR. ZILIAK: Sorry. My fault.  
 8 MR. SCHMIDT: That's all right.  
 9 BY MR. SCHMIDT:  
 10 Q Fifth column, "corrective action,"  
 11 that's the action that must be taken if a  
 12 parameter is triggered?  
 13 A Correct.  
 14 Q Okay. Sixth action -- sixth column is  
 15 "action required," and it's either a yes or no,  
 16 right?  
 17 A Yes.  
 18 Q Okay. So if a risk parameter is  
 19 triggered, that column should flip from no to  
 20 yes?  
 21 A It should.  
 22 Q Does it always?  
 23 A No.  
 24 Q Okay. Is that a known sort of error of  
 25 this report?

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1 A Yes, it is.  
 2 Q Okay. So do you go by whether the  
 3 third column is above or below the metric in the  
 4 second column to determine whether a risk  
 5 parameter has been triggered?  
 6 A Yes.  
 7 Q So, for example, if you look all the  
 8 way at the bottom, "put ratio," it says, "Must be  
 9 greater than or equal to one." It is less than  
 10 one, right?  
 11 A Yes.  
 12 Q So this one has been triggered on this  
 13 particular report; is that correct?  
 14 A By this report, yes. But to be honest,  
 15 I don't believe it.  
 16 BY MR. BENSON:  
 17 Q Why not?  
 18 A Because I don't ever recall in the  
 19 portfolio having a position that would generate  
 20 that kind of ratio.  
 21 Q So are you aware of expressing your  
 22 disbelief of that figure?  
 23 A I -- I don't recall it. Um...  
 24 Q Do you recall having any conversations  
 25 with Manamu Solutions or anyone at Catalyst to

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1 express your disbelief in the accuracy of these  
 2 reports?  
 3 A From time to time I would have -- I  
 4 would have discussion with Kimberly, Ms. Rios,  
 5 and she would generally be the point of contact  
 6 with -- with Model Alpha Manamu Solutions.  
 7 Q So at the bottom it says -- you see it  
 8 says --  
 9 A Right.  
 10 Q -- call contract, put contract long,  
 11 put contracts short, right? So 3,000 long  
 12 contracts, 5,000 short contracts. Would that  
 13 generate a .6 put ratio?  
 14 A Yeah. If -- if those numbers are  
 15 correct, that would generate a .6, and, again,  
 16 I'm just -- if -- if you ask me if this were ever  
 17 the case without showing this report, I would  
 18 tell you no, because of my recollection, I don't  
 19 recall ever violating that particular metric.  
 20 Q Okay. But if we looked at your actual  
 21 trading and it showed those number of contracts,  
 22 that would be the right answer, right?  
 23 A Yeah. It's -- and it's possible I'm  
 24 mistaken certainly.  
 25 Q Sure. Okay. So -- so put aside your

<p style="text-align: right;">Page 109</p> <p>1 Q Is it fair to say that you've gotten 2 advice from an accountant or an attorney on that 3 structure? 4 A Yes. 5 BY MR. SCHMIDT: 6 Q Prior to -- 7 (Reporter interruption.) 8 BY MR. SCHMIDT: 9 Q Okay. So prior to the conversion of 10 the future fund, did the Harbor fund have a 11 private placement memo or similar document? 12 A Yes. 13 Q Okay. And who wrote that document? 14 A It, as you know, went through many 15 iterations in the life of the fund. So the most 16 recent iteration would have been done by Mr. De 17 Muria. 18 Q Okay. So let's step back to the 19 beginning. 20 A Right. 21 Q When was the PPM created for the Harbor 22 fund? 23 A I want to say in 2006. Maybe 2005. 24 Q Okay. About when you started trading? 25 A Right.</p>	<p style="text-align: right;">Page 111</p> <p>1 the trading strategy based on your expertise and 2 experience, they know what you tell them, right? 3 A Yes. 4 Q Okay. Other than you providing that 5 substantive content, is anybody else providing it 6 to the firm in New Jersey who's putting the PPM 7 together? 8 A No. 9 Q Okay. And how did you use that 10 document? 11 A Whenever an investor wanted to come 12 into the fund, that was provided to them. 13 Q Okay. And you mentioned that it was 14 revised at points over time? 15 A Yes. 16 Q Were you involved in those revisions? 17 A Yes. 18 Q Okay. If something substantively 19 changed regarding the trading strategy, the 20 objectives, or principal risk to that trading 21 strategy, are you the person updating that 22 section or providing the information to the 23 people in New Jersey to update that section? 24 A Yes. 25 Q Okay. What is your understanding about</p>
<p style="text-align: right;">Page 110</p> <p>1 Q Sorry. Other clients's money? 2 A Right. Right. Exactly. 3 Q And what was your involvement in the 4 drafting of that initial private placement memo? 5 A I described the strategy. That was 6 pretty much it. 7 Q Is it fair to say that you were 8 responsible for providing the substantive 9 content, and then somebody else put it in an 10 appropriate format? 11 A And -- and -- right. More than a 12 format. I would suggest that I depended on the 13 expertise of the individuals preparing it to -- 14 to prepare a document that was appropriate in 15 terms of risk disclosure, as well as strategy 16 description and to interact with the CFTC and FA 17 to -- to get it recognized. 18 Q Okay. But this firm in New Jersey, 19 they don't know what the strategy is other than 20 what you tell them, right? 21 A Correct. 22 Q Okay. And the objective of the fund, 23 they only know what you tell them? 24 A Correct. 25 Q Okay. And as to the principal risk of</p>	<p style="text-align: right;">Page 112</p> <p>1 whether the PPM needed to be truthful, accurate, 2 and complete? 3 A My best understanding would be that it 4 did need to be truthful, accurate, and complete. 5 Q Okay. So if the Harbor fund had three 6 principal risks to the trading strategy, is it 7 sufficient for you to describe one and leave out 8 the other two? 9 A Probably not. 10 Q I'm just asking your understanding. 11 A Sure. 12 Q Would that be okay or not okay? 13 A That would be not okay. 14 Q Okay. And who had ultimate 15 responsibility to determine whether or not the 16 PPM was truthful, accurate, and complete? 17 A I did. 18 Q And that also went for any revision to 19 it; is that correct? 20 A Yes. 21 Q Okay. Let me show you what's been 22 marked as Commission Exhibit 109. 23 (SEC Exhibit No. 109 was 24 marked for identification.) 25 BY MR. SCHMIDT:</p>

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1 Q Do you recognize that document?  
 2 A Yes.  
 3 Q Can you tell me what it is?  
 4 A It looks like a fact sheet for the  
 5 predecessor fund.  
 6 Q Meaning the Harbor fund?  
 7 A The Harbor fund. Sorry.  
 8 Q Okay. And what's your understanding of  
 9 what a fact sheet is?  
 10 A It's a piece of marketing material that  
 11 describes relevant attributes of the investment  
 12 vehicle.  
 13 Q Okay. And by "marketing material," you  
 14 mean it goes to investors and prospective  
 15 investors?  
 16 A It can, yes.  
 17 Q Did you give these or send these to  
 18 investors, prospective investors, or advisors?  
 19 A I did. I had no contact with advisors  
 20 as a part of Harbor Assets, but I did, yes.  
 21 Q Investors and prospective investors?  
 22 A Yes.  
 23 Q Okay. And I guess the same questions  
 24 regarding the substantive content on these fact  
 25 sheets during the Harbor fund phase, are you the

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1 person providing that substantive information?  
 2 A Yes.  
 3 Q And are these issued -- these fact  
 4 sheets issued quarterly?  
 5 A I didn't have a regular update protocol  
 6 for these.  
 7 Q Okay. Do you know how -- during the  
 8 life of the fund preconversion, how many,  
 9 approximately, you issued?  
 10 A No.  
 11 Q Okay. What is your understanding on  
 12 whether the information on these facts sheets has  
 13 to be true, accurate, and complete?  
 14 A I believe it should be.  
 15 Q Same understanding you have for the  
 16 PPM?  
 17 A Yes.  
 18 Q Okay. What's the stated objective of  
 19 the Harbor fund, according to this fact sheet?  
 20 A Capital appreciation.  
 21 Q Are you reading the first sentence on  
 22 the top left?  
 23 A Yes.  
 24 Q Okay. Can you tell the date of this  
 25 fact sheet?

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1 A It looks like March of 2013.  
 2 Q So --  
 3 A Perhaps April because March is -- this  
 4 is performance.  
 5 Q Okay. So you have the full performance  
 6 numbers for the first quarter of 2013. So your  
 7 best guess is sometime in April of 2013 is  
 8 probably when this got created?  
 9 A Yes.  
 10 Q Okay. Can you think of any reason, if  
 11 you had another full month of performance, that  
 12 you wouldn't include it?  
 13 A No.  
 14 Q Okay. So it was your intention that  
 15 the information on this form was true, accurate,  
 16 and complete at the time it was completed and  
 17 given to investors; is that correct?  
 18 A That was my intention.  
 19 Q Okay. I'm going to hand you what's  
 20 been marked as Exhibit 133.  
 21 (SEC Exhibit No. 133 was  
 22 marked for identification.)  
 23 BY MR. SCHMIDT:  
 24 Q Do you recognize this document, Mr.  
 25 Walczak?

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1 A I do.  
 2 Q Okay. Can you please tell us what it  
 3 is?  
 4 A It looks to be the prospectus dated  
 5 around the time of the conversion of the fund.  
 6 Q The prospectus for the futures fund?  
 7 A For the futures fund, yes.  
 8 Q Okay. And it's dated August 29th,  
 9 2013?  
 10 A Yes.  
 11 Q And does that seem to be right about  
 12 the time when it converted from the Harbor fund  
 13 to the futures fund?  
 14 A Yes.  
 15 Q Okay. Is it fair to say then that this  
 16 is probably the initial prospectus for the  
 17 futures fund?  
 18 A That would be my guess.  
 19 Q Okay. Do you remember a prospectus for  
 20 the futures fund that would have Catalyst on it  
 21 that would predate conversion to the futures  
 22 fund?  
 23 A No.  
 24 Q Okay. That doesn't really make sense,  
 25 does it?

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1 A No.  
 2 Q Okay. So I want to know your role in  
 3 drafting, reviewing, or approving sections of  
 4 this document. So as we move forward, those are  
 5 sort of the --  
 6 A Sure.  
 7 Q -- the big pictures that I'm trying to  
 8 get a sense of.  
 9 A Sure.  
 10 Q Okay?  
 11 So, first of all, big picture, did you  
 12 have any role in drafting this document?  
 13 A No.  
 14 Q No role --  
 15 A Well, if you mean role, I provided  
 16 Catalyst with materials, like probably this  
 17 latest document, my most recent PPM, but I had no  
 18 role in putting this document together, other  
 19 than to provide them that input.  
 20 Q Okay. So let's start there then.  
 21 It sounds like you're not actually  
 22 sitting down at the computer and drafting  
 23 language?  
 24 A Right.  
 25 Q And you're not dictating language that

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1 somebody else is typing into a computer?  
 2 A Correct.  
 3 Q But in advance of the creation of  
 4 Exhibit 133, somebody at Catalyst asked you for  
 5 written material to help them create this  
 6 document?  
 7 A Yes.  
 8 Q Who is that person?  
 9 A I don't remember exactly who.  
 10 Q Okay. And --  
 11 BY MR. BENSON: Was it a man or a  
 12 woman?  
 13 THE WITNESS: I don't remember that.  
 14 BY MR. SCHMIDT:  
 15 Q What did you provide?  
 16 A My best recollection is I provided my  
 17 most recent PPM.  
 18 Q Did you provide any of the fact sheets?  
 19 A I think so.  
 20 Q And would you have sent those via  
 21 e-mail?  
 22 A Yes.  
 23 Q Can you think of anything else you  
 24 provided other than the PPM, most recent PPM, and  
 25 the fact sheets?

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1 A No.  
 2 Q How often did you update the PPM?  
 3 Again, this is the PPM for the Harbor fund,  
 4 correct?  
 5 A Right.  
 6 Q Okay. So how often did you update that  
 7 PPM?  
 8 A Roughly once a year. The requirement  
 9 was nine months. I wasn't very active in  
 10 soliciting new investors. So there were times  
 11 when I let it go past the update period. So  
 12 roughly once a year.  
 13 Q Did you have a time of year when you  
 14 did that? Like January or --  
 15 A Whenever it came due, as I said, and  
 16 most of the time there -- there were not  
 17 investors that -- you know, where it was critical  
 18 so sometimes I let time lapse.  
 19 Q Okay. Did you -- either before or  
 20 after you sent the written material to Catalyst  
 21 to help draft this document, did you have either  
 22 in-person or on-the-phone discussions about what  
 23 should be included in this document, meaning the  
 24 prospectus that is Exhibit 133?  
 25 A No.

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1 Q No discussions at all?  
 2 A Not that I recall.  
 3 Q Okay. Do you recall ever getting any  
 4 section of the prospectus, either -- either the  
 5 whole thing or parts of it, sent to you in e-mail  
 6 or some other form for you to look at and okay or  
 7 approve?  
 8 A Yes.  
 9 Q Okay. So at this point, have you  
 10 described to us your entire role in drafting any  
 11 portion of this document?  
 12 A Everything I remember.  
 13 Q Okay. So let's talk about your role in  
 14 reviewing the language in this document. Did you  
 15 review any part of this before it was finalized?  
 16 A I do remember getting parts of it sent  
 17 to me for review.  
 18 What I recall is that my review was of  
 19 the investment strategy description.  
 20 Q Okay. Who sent it to you to review?  
 21 A I don't know that.  
 22 Q Okay. And your understanding is the  
 23 investment strategies section is the one that you  
 24 were supposed to review?  
 25 A That's the -- that's the one I recall.

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1 Q And do you recall being directed to  
2 review that or that is what you chose to review?  
3 A No. I recall being asked to look at  
4 the parts that I could -- that I was qualified to  
5 comment on, meaning does this accurately describe  
6 your strategy, and that's what I reviewed.  
7 Q So that's what I trying to get a sense  
8 of. Is it a request from Catalyst: Review this  
9 document for the parts that you think you have  
10 knowledge of? Or was it: You have knowledge of  
11 the strategy; review the strategy part?  
12 Do you understand the difference?  
13 A Well, let me describe what I recall  
14 happening. I recall getting an e-mail from  
15 somebody at Catalyst --  
16 Q Okay.  
17 A -- with a portion of this document,  
18 which I recall to be the investment strategy,  
19 saying does this accurately describe what you do.  
20 Q Okay. So you don't recall getting a  
21 draft of the entire thing and being asked to  
22 review it?  
23 A Not before it went out, no.  
24 Q Okay.  
25 MR. BENSON: Did that surprise you?

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1 THE WITNESS: No.  
2 BY MR. SCHMIDT:  
3 Q Why not?  
4 A Because I have no expertise in  
5 prospectus preparation in the '40 Act vehicle.  
6 BY MR. BENSON:  
7 Q Don't you have expertise as to what the  
8 strategy is --  
9 A Sure.  
10 Q -- and what the risks are, and what the  
11 objectives are?  
12 A Yes.  
13 Q Who had more expertise than you do as  
14 of August 29th, 2013, regarding those issues?  
15 A No one.  
16 Q And with that being said, you weren't  
17 surprised that you were asked -- you were not  
18 surprised that this went out without you having  
19 to review the entirety of it for accuracy and  
20 approval?  
21 A No.  
22 Q Why not?  
23 A Because I'm not an attorney. I have no  
24 expertise in what sorts of disclosures are  
25 appropriate in the '40 Act vehicle.

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1 Q Does that seem like a prudent practice,  
2 sitting here today?  
3 A I have no basis to comment. I mean --  
4 Q Um-hum. That's fine.  
5 BY MR. SCHMIDT:  
6 Q At some point, this document was  
7 finalized, correct?  
8 A Yes.  
9 Q And it was issued.  
10 Other than reviewing the principal  
11 trading strategy section that you recall being  
12 asked to review, were you asked to give approval  
13 to any section or to the prospectus in its  
14 entirety before it went out?  
15 A No.  
16 Q Okay. Do you know who at Catalyst  
17 drafted this document?  
18 A No.  
19 Q Do you know anybody at Catalyst who  
20 reviewed this document before it was issued?  
21 A No.  
22 Q Do you know anyone at Catalyst who's  
23 responsible for approving this document before it  
24 got issued?  
25 A No.

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1 Q Can you give me your best guess, based  
2 on your -- your experience with Catalyst now  
3 stretches about five years?  
4 A Four and a half. Yeah. Sure.  
5 Q Four and a half. Okay.  
6 Based on that experience, if you had to  
7 take your best as to who was responsible for  
8 putting this document together, who would it be?  
9 A Maybe Joanne Strasser. Maybe --  
10 Q And who --  
11 A That's a name. I don't know.  
12 Q Who is Ms. Strasser -- could you spell  
13 it, please.  
14 A S-t-r-a-s-s-e-r.  
15 Q Who is Ms. Strasser?  
16 A I'm not certain of her role.  
17 Q Okay. Based on your experience with  
18 Catalyst over the last four and a half years,  
19 what is your best guess as to who would give  
20 final approval for this document before it gets  
21 issued?  
22 A To be honest, I have no idea. I am not  
23 all familiar with the process by which this  
24 document is prepared or what approvals are given,  
25 or how it's distributed. Not my area of company.

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1 Not my area of interest.

2 My interest is in ensuring that I  
3 comply with it, but in terms of who writes it,  
4 approves it, distributes it, I'm not involved in  
5 that.

6 Q Yeah. I'm just trying to understand  
7 what your best would be, right? I mean, there's  
8 certain things that happen in this building --

9 A Right.

10 Q -- that I have no idea --

11 A Right.

12 Q -- who does it, but I have a guess if I  
13 had to guess. And I am just trying to see if you  
14 would know.

15 Like you said Ms. Strasser. Who do you  
16 think gives approval for these things?

17 A I honestly don't know.

18 Q Okay. Does this prospectus 133, that's  
19 dated August 29th, 2013, was it ever revised at  
20 any point?

21 A I believe so.

22 Q Why do you believe so?

23 A Because I think there's -- well, I know  
24 there's a prospectus with a later date on it.

25 Q Okay. So it has been revised?

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1 A Yes.

2 Q Okay. Were you ever involved in the  
3 process of --

4 A The point being it has a later date,  
5 but I have no idea if there's differences that I  
6 didn't notice when I reviewed it.

7 So in terms of whether it was revised,  
8 updated, what, that I don't know.

9 Q Okay. At some point, versions of this  
10 prospectus appeared with other dates, right?

11 A Yes. Yes.

12 Q And you're saying you know those  
13 documents exist. You don't know exactly whether  
14 any changes have been made?

15 A Correct.

16 Q Okay. Did you have any role in either  
17 the drafting, review, or approval of those  
18 revisions of the prospectus?

19 A I recall being asked, subsequent to the  
20 initial prospectus, to take a look again at the  
21 investment strategy and make sure that it  
22 correctly reflected what I was doing.

23 Q When?

24 A Don't know. I just know it happened.

25 Q Okay. So we are sitting in early 2018.

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1 The initial one is mid 2013?

2 A Right.

3 Q In the last year? In the last two  
4 years? When were you asked to do this?

5 A I honestly have no idea.

6 Q You don't know if it was within the  
7 last year?

8 A No, I don't.

9 Q Okay.

10 BY MR. BENSON:

11 Q Just to be clear, does that mean that  
12 it could have been in the last year?

13 A Well, I don't know whether it was or it  
14 wasn't so...

15 Q Right. But that's what I am asking to  
16 clarify, because some people -- I want to make  
17 sure I understand.

18 You have no idea if it was two weeks  
19 ago or if it was four years ago?

20 A Correct.

21 Q You have no idea?

22 A Correct.

23 Q You weren't asked to look at -- you  
24 weren't asked that question yesterday, were you?  
25 You weren't asked to make -- to review any

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1 prospectuses yesterday, for instance, right?

2 A Right.

3 Q Okay. So you know it wasn't yesterday?

4 A Yeah.

5 Q But anything beyond yesterday, you have  
6 no idea?

7 A Not with any certainty. I mean, all  
8 right.

9 Q Not looking for certainty. I'm looking  
10 for best guess.

11 A Yeah. Okay. Well, no, I can't even  
12 tell you if perhaps -- no. I'm being very  
13 honest. I just don't know.

14 Q And that's fine. I'm not --

15 A Yeah.

16 Q I'm not questioning your integrity or  
17 your honesty.

18 I just want to make sure that we have  
19 exhausted your memory as to when you were asked  
20 to review revisions to the prospectus. That's  
21 all I want. Okay?

22 A Okay.

23 BY MR. SCHMIDT:

24 Q Do you remember this happening once or  
25 more than once?

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1 And by "this," I mean asked to review a  
2 revision of the prospectus.

3 A What I'm trying to sort through in my  
4 mind is there are also times when I'm asked to  
5 take a look at the fact sheet.

6 Q We'll get to those.

7 A Right. But what I mean is, when I  
8 think about reviewing documents, these are not  
9 things that stand out in my mind as memorable  
10 life events.

11 This is not the reason I'm in this  
12 business.

13 So I review these from -- you know, to  
14 ensure that I remain in compliance with the  
15 prospectus, but in terms of review cycles, just  
16 not something I do or I'm -- have any interest  
17 in, to be honest.

18 Q But they are very different documents.

19 The prospectus is a -- is a multi-page  
20 document. A fact sheet is a front and back --

21 A Sure.

22 Q -- right? Is that correct?

23 A Yes. Absolutely.

24 Q Okay. So at least once you've been  
25 asked to review your principal trading strategy

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1 section for a revision of the prospectus?

2 A Yes. And -- and further to your  
3 question about the fact sheet versus prospectus,  
4 very similar -- this is a multi-page document.  
5 I'm not asked to review the multi-page document.

6 I'm asked to review a trading strategy,  
7 which is of very similar length to what's  
8 described in the fact sheet.

9 Q Okay. In your entire experience with  
10 Catalyst, can you remember being asked to review  
11 any language for a fact sheet or a prospectus  
12 other than principal trading strategy?

13 A Not that I recall, no.

14 MR. SHANK: And whether at any point  
15 prior to February of 2017 you were asked to  
16 review the principal trading strategy language?

17 THE WITNESS: Prior to February of  
18 2017? Yes. I'm -- I'm relatively certain that  
19 what reviews I did were earlier rather than later  
20 in the life of the fund.

21 MR. SHANK: Okay. Thank you.

22 BY MR. SCHMIDT:

23 Q I apologize if I asked this. I don't  
24 think I have.

25 What is your understanding as to

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1 whether the prospectus has to be true, accurate,  
2 and complete when it's issued?

3 A Certainly as an investor, I believe it  
4 does.

5 Q It does have to be true, accurate, and  
6 complete?

7 A Yes.

8 Q Same rules would apply to the fact  
9 sheet?

10 A Yes.

11 Q Okay. So can you flip to Page 6 of  
12 this SEC Exhibit 133, please?

13 A I'm sorry. Page 6, did you say?

14 Q Yeah. So at the bottom in the middle,  
15 there's a page number.

16 A Right.

17 Q That's what I'm looking at.

18 So you see that it describes the  
19 advisor as Catalyst, correct?

20 A Yes.

21 Q Okay. And it describes you, Edward S.  
22 Walczak -- that's you, right?

23 A Yes.

24 Q As a portfolio manager of Catalyst. Do  
25 you see that?

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1 A Yes.

2 Q Do you think that is an accurate  
3 description of your relationship between you,  
4 Catalyst, and the futures fund?

5 A I do manage this fund on behalf of the  
6 advisor.

7 Q Do you believe you're a portfolio  
8 manager of Catalyst?

9 A I'm not an employee of Catalyst. So  
10 that's what caused me doubt in terms of --

11 Q And that's what I'm trying to  
12 understand, right?

13 A Right.

14 Q Before you described yourself as  
15 self-employed with Catalyst as your client?

16 A Yes.

17 Q Okay. To me that doesn't sound  
18 consistent with you being a portfolio manager of  
19 Catalyst.

20 Do you have a reason why that's  
21 consistent, in your mind?

22 A Well, because I serve -- you know, my  
23 agreement with Catalyst notwithstanding, I serve  
24 as portfolio manager of one of their funds. So  
25 could this language be correct? Sure. I'm not

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1 believe there are different risks in a mutual  
2 fund format than there are in a private placement  
3 format, or there could be.

4 BY MR. BENSON:

5 Q Could you give us examples?

6 A I can only imagine that there is a  
7 different set of risks around daily liquidity  
8 requirements, where assets are held, things like  
9 that.

10 Q So if I'm understanding you correctly,  
11 the risks that you are thinking of, those are  
12 regulatory risks that relate to the legal  
13 structure, not to the actual trading -- trading  
14 of the funds?

15 A Correct. I would -- I would say  
16 principal risks associated with the trading  
17 activity of the fund remain the same pre and  
18 post-conversion.

19 BY MR. SCHMIDT:

20 Q Yeah. Okay. So that's a good  
21 clarification.

22 So setting aside any sort of  
23 regulations or requirements that adhere to the  
24 legal structure, your understanding is it's the  
25 same?

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1 A Yes.

2 Q And what is the same is the principal  
3 of risks to the trading strategy, right? I am  
4 sorry. I just said "it's the same." I just wanted  
5 to define "it."

6 A Oh. Okay.

7 Q Is the principal risk to the trading  
8 strategy, right?

9 A Yes.

10 Q Okay. And then finally, pre and  
11 post-conversion, is the objective of the trading  
12 strategy the same from the Harbor fund to the  
13 futures fund?

14 A Excuse me.

15 The objective was stated differently,  
16 but I believe it to be materially the same.

17 Q And how is the objective stated  
18 differently?

19 A The word "capital preservation" was  
20 added in the '40 Act -- in the '40 Act vehicle  
21 compared to the predecessor Harbor vehicle.

22 Q Did you add the phrase "capital  
23 preservation" to the description of the objective  
24 for the futures fund?

25 A I did not.

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1 Q Who did?

2 A I don't know.

3 Q Did anybody come to you and say: Is  
4 this an accurate description of the objective,  
5 since you're the portfolio manager?

6 A I don't recall being asked that  
7 specifically.

8 Q So when you're responsible for doing  
9 the PPM for the Harbor fund, you describe the  
10 objective of your trading strategy as capital  
11 appreciation?

12 A Yes.

13 Q It gets converted -- it, the -- the  
14 Harbor fund gets converted to the futures fund in  
15 mid 2013, correct?

16 A Yes.

17 Q And the objective is then changed to  
18 capital appreciation and capital preservation in  
19 all market conditions, correct?

20 A Yes.

21 Q And nobody asked you for your input,  
22 review, or approval of that change when it  
23 happened?

24 A No one asked for my approval other than  
25 to ask me if this was still a reasonable

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1 description, this -- some of the language was  
2 changed, that being one of them, whether this was  
3 still a description of -- an accurate description  
4 of the strategy.

5 Q Okay. So let's walk back because  
6 before -- I'm not talking about the -- I'm  
7 talking about the objectives.

8 So before you told me that you were  
9 asked to review the principal trading strategy.

10 Were you also asked to review the  
11 objectives of that trading strategy?

12 A I don't know if that was a part of it,  
13 but probably.

14 In other words, I don't recall if the  
15 document -- the document I recall looking at was  
16 a description of what I do.

17 I believe it led off with the  
18 investment objective. So that would have been  
19 something I looked at certainly.

20 Q And somebody wrote that before they  
21 gave it to you?

22 A Yes.

23 Q And whoever that person is inserted  
24 this capital preservation language?

25 A Yes.

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1 Q Okay. When you were the portfolio  
2 manager for the Harbor fund, you used fact sheets  
3 that are just like this to give to investors,  
4 right?

5 A Yes.

6 Q Okay. If I asked you the same  
7 questions about your role in drafting, reviewing,  
8 and improving the content of this document and  
9 other fact sheets for the commodity fund like  
10 this, are your answers the same as it was with  
11 Exhibit 75?

12 A They -- they differ as follows:  
13 Subsequent to the early versions -- and I can't  
14 tell you for sure how many of these I reviewed.  
15 I allowed Ms. Rios as the PM of the commodity  
16 fund to review them subsequently.

17 Q And did you tell Catalyst that she was  
18 going to take over that role?

19 A No one asked me who was doing it. I  
20 don't recall anyone sending this to me and -- and  
21 my not returning it.

22 Q I guess -- that's not the question.

23 So I want to understand. After you  
24 make this decision that she can -- Ms. Rios?

25 A Right.

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1 Q Can review and approve it or review it  
2 for accuracy, is it a situation where you're  
3 getting the requests still, you're forwarding to  
4 Ms. Rios, or is the request going straight to Ms.  
5 Rios?

6 A Straight to her.

7 Q Okay. So how do they know that the  
8 request goes straight to her if you haven't had a  
9 conversation with them that Ms. Rios was going to  
10 take over this task?

11 A They assumed that she would do it.

12 Q Okay.

13 A I mean, no one asked me. They sent it  
14 to her.

15 Q I'll show you what's been marked as --  
16 I apologize. It looks like I only have one copy  
17 of this, but I'll give it to you. So this is  
18 marked as Exhibit 85.

19 (SEC Exhibit No. 85 was  
20 marked for identification.)

21 BY MR. SCHMIDT:

22 Q It is -- well, let me ask: Do you  
23 recognize that document?

24 A I've seen versions of a presentation  
25 that looks like this before. I don't know how

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1 many versions there may have been. So this is a  
2 presentation of some kind.

3 Q Okay. It is a presentation about the  
4 futures fund, correct?

5 A Yes.

6 Q Okay. And -- in what context have you  
7 seen this document before or a document like it?

8 A I recall seeing it. I can't tell you  
9 exactly where. If you would like, maybe if I  
10 take a look at it, I can recall.

11 Q Yeah. Do you know what the document is  
12 used for? The purpose?

13 A No.

14 Q Have you ever gone with one of  
15 Catalyst's wholesalers to talk to an investment  
16 advisor?

17 A Yes.

18 Q Have you ever used a presentation like  
19 this to talk to that investment advisor?

20 A I don't recall any -- any specific use  
21 of this. I do recall a use of the fact sheet.

22 Q Okay. So take a look through it. See  
23 if you recognize that document.

24 A Printer is out of ink. Yeah. I

25 recognize this. This is a document that may have

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1 been used in discussions with the wholesalers.  
2 You know, I've seen it before. I don't recall if  
3 this is a specific one that I might have used  
4 myself to present to wholesalers, but that's a  
5 likely or a possible use of it.

6 Q Okay. Looking at it, flipping through  
7 it, it's possible you have personally used this  
8 presentation to talk about the futures fund?

9 A It's possible.

10 Q Do you think it's likely?

11 A I just remember -- I don't do a lot of  
12 that, anything with sales support kind of work.  
13 Not what I'm good at. Not what I like to do.

14 , but I do recognize that I'm certainly  
15 the author of portions of this, and it is

16 possible that early on, years ago, I may have  
17 used it with the wholesalers.

18 Q What portions of this document do you  
19 recognize as being yours that you authored?

20 A Well, the parts I can read, a good  
21 portion of the commentary. The verbiage is mine.  
22 Some of the graphics were done by others. Some  
23 of the wording looks a little different than I  
24 remember. But for the most part I'll say that I  
25 developed or I authored much of this.

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1 through when are you talking? What's the time  
 2 frame you're talking about?  
 3 A Well, it -- as far as I understand the  
 4 research -- the meaning of research, he has not  
 5 participated in any research on the strategy.  
 6 Q Okay. So nothing --  
 7 A Again, we are talking about this time  
 8 frame, late 2016.  
 9 Q Okay. So up until whatever -- are you  
 10 comfortable with the end of November 2016?  
 11 A Yes. I mean, that's -- that's what I  
 12 recall.  
 13 Q You recall it?  
 14 A He may have been doing something that  
 15 I'm unaware of, but I don't recall interacting  
 16 with him on any research related to our strategy  
 17 or of the fund.  
 18 Q Okay. And you don't recall Ms. Rios  
 19 saying, hey, I got this from Mr. Schoonover; he  
 20 researched X, Y, Z for the futures fund?  
 21 A I don't recall it.  
 22 Q Okay. There's a section for Mr. Glass,  
 23 head of operations. Do you see that?  
 24 A Yes.  
 25 Q So it says he provides operations and

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1 administrative services for the advisor and the  
 2 funds including trade and sales reporting. Do  
 3 you see that?  
 4 A Yes.  
 5 Q What has been his involvement in terms  
 6 of providing operations and administrative  
 7 services to the futures fund?  
 8 A My interaction with him is around  
 9 compliance, and it's more specific compliance in  
 10 the sense of personal trading, recordkeeping,  
 11 employee manual, Catalyst policies, that kind of  
 12 compliance activity.  
 13 Q Okay. So put that compliance to the  
 14 side.  
 15 We are talking about operations and  
 16 administrative services.  
 17 Are you aware of him providing any of  
 18 that to the futures fund?  
 19 A I don't recall any -- any strong  
 20 involvement that -- of his.  
 21 Q Okay. And so continuing on to Page 6  
 22 which has 7524 at the bottom, do you see that?  
 23 A Yes.  
 24 Q Okay. It says -- I'm looking at Item 2  
 25 on there. Do you see that?

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1 A Yes.  
 2 Q It says that the advisor will determine  
 3 the securities to be purchased for the fund, the  
 4 portfolio securities to be held or sold by the  
 5 fund, and a portion of the fund's assets to be  
 6 held uninvested. Do you see see that?  
 7 A Section 2?  
 8 Q Section 2. So there's a question, and  
 9 it looks like it's in bold, and then there's an  
 10 answer. Do you see that?  
 11 A Yes. Got it.  
 12 Q Okay. So look at the second full  
 13 sentence of the answer. Do you see where I'm  
 14 talking, like third line down?  
 15 A Yes.  
 16 (Reporter clarification.)  
 17 BY MR. SCHMIDT:  
 18 Q Have you had a chance to look at that?  
 19 A Yes.  
 20 Q Okay. So tell me who at Catalyst  
 21 determined what securities to be purchased for  
 22 the futures fund.  
 23 A I did.  
 24 Q Nobody in New York?  
 25 A Right. That's correct.

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1 Q Okay. And the portfolio securities to  
 2 be held or sold by the fund?  
 3 A I did.  
 4 Q Okay. So Ed Walczak, Wisconsin, not  
 5 Catalyst, New York?  
 6 A Correct.  
 7 Q Okay. And a portion of the fund's  
 8 assets to be held uninvested?  
 9 A Yes, I did.  
 10 Q Also you, nobody in New York?  
 11 A Correct.  
 12 Q Okay. If you go to Question 3, key  
 13 risks associated with the fund's investment  
 14 strategy, do you see that?  
 15 A Yes.  
 16 Q Is this -- in your opinion, is this an  
 17 accurate description of the key risks associated  
 18 with the fund's investment strategy?  
 19 A I'm not familiar with RIC guidelines  
 20 and restrictions. So if that's included in the  
 21 main risks, I don't know what those are.  
 22 Q You don't know what those are?  
 23 A No.  
 24 Q Okay. So put that to the side. Is the  
 25 rest of it accurate and complete?

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1 A Um-hum.  
 2 Q -- you were going to split fees with  
 3 Catalyst, right?  
 4 A That's correct.  
 5 Q Okay. And how did you agree to that  
 6 percentage split?  
 7 A I think that was what Catalyst  
 8 proposed, to the best I can remember.  
 9 Q Is that standard in your experience,  
 10 for a portfolio manager to get a 50 percent split  
 11 with the advisor on net advisory fees?  
 12 A I have no experience with what  
 13 portfolio managers make.  
 14 Q So before you entered into this  
 15 agreement, you didn't do any market research to  
 16 figure out, like, where should I be?  
 17 A Yes.  
 18 Q Have you ever bought a house?  
 19 A Yes.  
 20 Q Okay. So when you buy a house, are you  
 21 like, that's a great house; I'm going to pay \$10  
 22 million for it, or are you, like, it's a nice  
 23 house; I'm going to find out what the market is  
 24 before I put in my bid?  
 25 A The latter. I'll investigate the

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1 market before I --  
 2 Q That's usually what people do. But  
 3 with regard to entering into your employment  
 4 agreement, you didn't do any market analysis to  
 5 figure out what the typical split would be  
 6 between an advisor and a portfolio manager?  
 7 A No.  
 8 Q Okay.  
 9 25  
 10 BY MR. WASSERMAN:  
 11 Q Was there a negotiation over that 50  
 12 percent number?  
 13 A No.  
 14 Q Who proposed it?  
 15 A Mr. Szilagyi.  
 16 Q So out of the gate, he offered you 50  
 17 percent of the advisory fees?  
 18 A Correct.  
 19 MR. BENSON: You didn't go for 52  
 20 percent?  
 21 THE WITNESS: No.  
 22 MR. BENSON: Okay.  
 23 MR. WASSERMAN: You're a modest man.  
 24 BY MR. SCHMIDT:  
 25 Q So that is the fee structure that

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1 existed pre Ms. Rios, correct, that we just went  
 2 over?  
 3 A It still exists.  
 4 Q Okay. So -- and at this point, we are  
 5 way past \$20 million; is that fair to say?  
 6 A At which point?  
 7 Q Today.  
 8 A Yes.  
 9 Q Or actually when Ms. Rios joined.  
 10 A Let's see. Yes. Yes.  
 11 Q Just -- just to give you a reference,  
 12 in May of 2013, I think you're at \$16 million.  
 13 So you had \$4 million to go at that point?  
 14 A That \$16 million didn't come over to  
 15 the fund. Roughly 7 million did.  
 16 Q Okay.  
 17 MR. WASSERMAN: But it's fair to infer  
 18 from this document that as of August 27th, 2013,  
 19 that AUM was less than \$20 million?  
 20 THE WITNESS: Yes.  
 21 BY MR. SCHMIDT:  
 22 Q Okay. So before Ms. Rios joins, as  
 23 long as the assets under management are above \$20  
 24 million, it's a 50/50 split between you and  
 25 Catalyst, correct?

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1 A Yes.  
 2 Q Okay. So do you remember how much Ms.  
 3 Rios was paid initially?  
 4 A I will give you my best recollection,  
 5 recognizing that it may be off. But my best  
 6 recollection was a \$100,000 per --  
 7 MR. ZILIAK: Salary?  
 8 THE WITNESS: Per annum with a bonus  
 9 potential.  
 10 BY MR. SCHMIDT:  
 11 Q Okay. Let's assume just for purposes  
 12 of this analysis, it's a \$100,000 even, no bonus.  
 13 Okay?  
 14 A (Nodding head.)  
 15 Q So -- and the split of advisory fees in  
 16 the first year that Ms. Rios is there is \$5  
 17 million a piece. Okay? Just for purposes of A  
 18 hypothetical.  
 19 A Okay.  
 20 Q All right.  
 21 Does Ms. Rios's \$100,000 come out of  
 22 your 5 million or Catalyst's 5 million, or is it  
 23 split evenly between them?  
 24 A It comes out of my 5 million.  
 25 Q Okay. So other than the routing of

<p style="text-align: right;">Page 297</p> <p>1 and/or Catalyst?</p> <p>2 A There is no contract, no.</p> <p>3 Q Okay. So last week -- it sounds like</p> <p>4 maybe even yesterday she -- Ms. Rios was relieved</p> <p>5 of responsibilities with regard to the hedged</p> <p>6 futures strategy fund, right?</p> <p>7 A That was done at her request after</p> <p>8 several weeks, perhaps months, of discussion</p> <p>9 between the two of us.</p> <p>10 Q Okay. So you had lengthy discussions</p> <p>11 about this decision?</p> <p>12 A Yes.</p> <p>13 Q Okay. Why did she want to be relieved</p> <p>14 of responsibilities with regard to the hedged</p> <p>15 futures strategy fund?</p> <p>16 A Two reasons. The -- this</p> <p>17 investigation, for example, has caused her a lot</p> <p>18 of stress, and she relates that to hedged</p> <p>19 futures.</p> <p>20 The second reason is that she's</p> <p>21 excited, passionate about the commodity fund that</p> <p>22 she takes a lead role in and is anxious to devote</p> <p>23 more of her time to that vehicle.</p> <p>24 Q Did Ms. Rios ever express to you that</p> <p>25 by removing herself from the hedged futures</p>	<p style="text-align: right;">Page 299</p> <p>1 And, again, there's also the issue of</p> <p>2 her being able to devote more time and -- and not</p> <p>3 perform some of the operational tasks associated</p> <p>4 with hedged futures.</p> <p>5 Q Okay. So do you recall when Ms. Rios</p> <p>6 joined or started working with you as an</p> <p>7 independent contractor on the hedged futures</p> <p>8 strategy fund?</p> <p>9 A Again, I'm pretty sure it was December</p> <p>10 1st of 2014.</p> <p>11 Q Okay. So between -- let's call it</p> <p>12 August 2013 and November 2014, you are the sole</p> <p>13 portfolio manager of the hedged futures strategy</p> <p>14 fund, correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. So what happens if Ed Walczak</p> <p>17 gets hit by a bus and dies during that period?</p> <p>18 Obviously, it didn't happen. Thank</p> <p>19 God. But what would have happened?</p> <p>20 A My wife would have collected</p> <p>21 significant life insurance --</p> <p>22 Q Okay.</p> <p>23 A -- been grief stricken, and then</p> <p>24 Catalyst would have had to find a different</p> <p>25 portfolio manager.</p>
<p style="text-align: right;">Page 298</p> <p>1 strategy fund in 2018 that would somehow impact</p> <p>2 her potential liability for conduct back in 2016,</p> <p>3 2017, and -- and earlier?</p> <p>4 A She did not.</p> <p>5 It was my comment to her that -- that</p> <p>6 exact point, that what's done is done; the past</p> <p>7 is past; leaving hedged futures now doesn't</p> <p>8 impact what's happened in the past.</p> <p>9 However, she was -- she was under a</p> <p>10 significant amount of stress and felt like this</p> <p>11 would be something she wanted to do.</p> <p>12 Q Okay. So you did talk about, you know,</p> <p>13 her decision and how it may or may not impact</p> <p>14 historical conduct with regard to the hedged</p> <p>15 futures strategy?</p> <p>16 A I gave -- as -- as her supervisor, I</p> <p>17 gave her my best opinion on that. In fact, I</p> <p>18 cautioned her to -- to David's point earlier,</p> <p>19 about potential decrease. David. I'm sorry.</p> <p>20 Maybe it wasn't even Sam who said the question</p> <p>21 about "Who gets her compensation?"</p> <p>22 I told her that, you know, that would</p> <p>23 mean a decrease in compensation, and she said it</p> <p>24 would be more than worth it to relieve herself</p> <p>25 from the stress of the hedged futures situation.</p>	<p style="text-align: right;">Page 300</p> <p>1 Q Okay. And what steps, if any, did you</p> <p>2 take to ensure that Catalyst would be able to</p> <p>3 find a replacement for you without disrupting the</p> <p>4 management of the hedged future -- the hedged</p> <p>5 futures strategy fund?</p> <p>6 A Well, the first was, as the fund grew,</p> <p>7 is I had discussions with Mr. Szilagyi who</p> <p>8 encouraged me to go find a person like Ms. Rios.</p> <p>9 And so that -- that search process probably took</p> <p>10 about six months or so. So we were down that</p> <p>11 path.</p> <p>12 At the same time I had put in place</p> <p>13 kind of failsafe procedures, so to speak, so that</p> <p>14 if something happened to me that the shareholders</p> <p>15 would not be immediately harmed, even though we</p> <p>16 would -- it's likely that Catalyst would have --</p> <p>17 well, again, I don't know what they would have</p> <p>18 done. I don't want to speculate, but we had</p> <p>19 discussions about whether they might have someone</p> <p>20 in-house who could take over the fund, whether we</p> <p>21 would wind it down to cash. We discussed several</p> <p>22 different options, ultimately, saying, look, we</p> <p>23 don't want this to happen. Let's get someone</p> <p>24 else on board.</p> <p>25 Q Okay. A lot to unpack there.</p>

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1 Q Ms. Rios, before a couple days ago --  
 2 right? So she's still portfolio manager of the  
 3 futures fund, and she's still being paid based on  
 4 whatever the percentage is, correct?  
 5 A Right.  
 6 Q Is she -- is her compensation also  
 7 based on any calculation of assets under  
 8 management or anything to do with the commodity  
 9 fund?  
 10 A Yes.  
 11 Q Okay. And did her pay under that  
 12 calculation for the commodity fund continue  
 13 through this recent change?  
 14 A Yes.  
 15 Q Was it revised at all?  
 16 A No.  
 17 Q Okay. So before the change, she got  
 18 paid A and B; and after the change, it was just  
 19 B, for example?  
 20 A Yes.  
 21 Q Okay.  
 22 MR. WASSERMAN: And it was your  
 23 testimony that A was approximately \$100,000 this  
 24 year?  
 25 THE WITNESS: Well, it's -- at the

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1 current fund level, that's what it would be  
 2 approximately. So as I said, it's -- it's ten  
 3 bips or one bip or whatever that number.  
 4 MR. WASSERMAN: And she walked away  
 5 from a hundred grand?  
 6 THE WITNESS: Yes.  
 7 BY MR. SCHMIDT:  
 8 Q Wait. I'm sorry. I guess I  
 9 misunderstood.  
 10 I thought it was a \$100,000 at one  
 11 billion.  
 12 A Yes.  
 13 Q So it would be more like \$400,000  
 14 today, right, or \$350,000?  
 15 A The reverse.  
 16 Q Oh.  
 17 A We are one billion today.  
 18 MR. WASSERMAN: The fund is no longer  
 19 at four billion, correct?  
 20 BY MR. SCHMIDT:  
 21 Q Okay. I'm sorry. So when it was four  
 22 billion, it was \$400,000?  
 23 A Yes.  
 24 Q Okay. So it tracked basically 100,000  
 25 every billion throughout the life of it?

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1 A Yes. Yes.  
 2 Q Okay. Do you remember what the  
 3 commodity fund was?  
 4 A Well, the commodity fund, her -- her  
 5 compensation in the commodity fund is 50 percent  
 6 of my compensation on the commodity fund, meaning  
 7 25 percent of advisory fees, the same conditions  
 8 minus sales commissions, et cetera.  
 9 BY MR. WASSERMAN:  
 10 Q How big is the commodity fund now?  
 11 A I think it's about 90 million now.  
 12 It's -- it's gone back and forth between 90 and  
 13 \$110 million over the last year.  
 14 Q Okay. So she makes -- so the total  
 15 advisory fees on that fund are 1 and  
 16 three-quarter percent; is that right?  
 17 A Yes.  
 18 Q And she makes about a quarter of that?  
 19 A Yes.  
 20 Q So that's -- that's, what, like 35 --  
 21 like .35 to .40 percent?  
 22 A It's -- at 100 million, it would be  
 23 \$375,000. No. That's wrong. 400 and -- don't  
 24 do math in public. 435 or something like that,  
 25 440.

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1 Q So she walked away from 20 percent of  
 2 her salary?  
 3 A Yes.  
 4 Q Any speculation as to -- other than  
 5 what you've already testified to today as to why  
 6 she did that?  
 7 A No. She was very -- all -- I have to  
 8 emphasize she's very upset and emotional about  
 9 aspects of the process that we are involved in  
 10 today.  
 11 Q Is --  
 12 MR. BENSON: Anything other than the  
 13 investigative process that she's expressed to you  
 14 as being challenging or frustrating to her such  
 15 as --  
 16 BY MR. WASSERMAN:  
 17 Q What do you recall of -- of -- of  
 18 your -- of her statements to you regarding why  
 19 she walked away from a quarter of her salary?  
 20 A Well, I -- I -- she came to me and said  
 21 that she would like to remove herself -- resign  
 22 from hedged futures, and I asked her why.  
 23 And she said that she -- as I've  
 24 testified, she said that the investigative  
 25 process was very stressful to her and, in